



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

P.O. Box 3000, Harrisonburg, Virginia 22801

(540) 574-7800 Fax (540) 574-7878

Physical Address: 4411 Early Road, Harrisonburg, VA

www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director

Amy Thatcher Owens
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
ARIAKE U.S.A., INC.
FOR
ARIAKE U.S.A., INC
VPDES Permit No. VAR051712**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Ariake U.S.A., Inc. regarding the Ariake U.S.A., Inc. facility located at 1711 North Liberty Street in Harrisonburg, Virginia, for the purpose of resolving certain violations of the State Water Control Law, Regulations, and the applicable permit.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Ariake" means Ariake U.S.A., Inc., a corporation authorized to do business in Virginia, and its affiliates, partners, and subsidiaries. Ariake is a "person" within the meaning of

Va. Code § 62.1-44.3.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
7. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
 - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. "DMR" means Discharge Monitoring Report.
9. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. "Facility" means the Ariake U.S.A., Inc. manufacturing facility, located at 1711 North Liberty Street in Harrisonburg, Virginia from which discharges of stormwater associated with industrial activity occur.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "O&M" means operations and maintenance.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Permit" means VPDES General Permit No. VAR051712 which was issued under the State Water Control Law and the Regulation on July 1, 2014 and which expires on June 30, 2019.
15. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials,

radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.

16. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are "pollution." Va. Code § 62.1-44.3.
17. "Regulation" means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. "State waters" means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. "Va. Code" means the Code of Virginia (1950), as amended.
21. "VAC" means the Virginia Administrative Code.
22. "VPDES" means Virginia Pollutant Discharge Elimination System.

SECTION C: Findings of Fact and Conclusions of Law

1. Ariake owns and operates a food manufacturing facility, which produces stocks, soup cases, and fats, located at 1711 North Liberty Street in Harrisonburg, Virginia. Ariake is subject to Permit No. VAR051712, which allows Ariake to discharge stormwater associated with industrial activity from the Facility.
2. Blacks Run is located in the Shenandoah River subbasin and the Potomac River Basin. Blacks Run is listed in DEQ's 305(b) report as impaired for e-coli bacteria and benthics.

3. Blacks Run is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
4. Va. Code § 62.1-44.5 states that: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances. Any person in violation of the provisions of subsection A who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters or (ii) a discharge that may reasonably be expected to enter state waters shall, upon learning of the discharge, promptly notify, but in no case later than 24 hours the Board, the Director of the Department of Environmental Quality, or the coordinator of emergency services appointed pursuant to § 44-146.19 for the political subdivision reasonably expected to be affected by the discharge. Written notice to the Director of the Department of Environmental Quality shall follow initial notice within the time frame specified by the federal Clean Water Act."
5. The Regulation, at 9 VAC 25-151-70, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes
6. Permit Part I.A.1.b.1 requires that: "Benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility's discharge. Monitoring shall be performed at least once during each of the first four, and potentially all, monitoring periods after coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2."
7. Permit Part II.F states that: "Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to: Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses."
8. Permit Part II.G states that: "Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part II F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain: A description of the nature and location of the discharge; The cause of the discharge; The date on which the discharge occurred; The length of time that the discharge continued; The volume of the discharge; If the discharge is continuing, how long it is expected to continue; If the discharge is

continuing, what the expected total volume of the discharge will be; and Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.”

9. On March 7, 2018, in response to a complaint of a strong odorous discharge from the Facility, DEQ staff performed a Permit inspection at the Facility. DEQ staff observed process wastewater associated with a scrubber unit line leak and wash down water from cleaning of the process area, flowing to a stormwater drop inlet at the Facility. DEQ also noted a strong rendering plant odor and observed visible solids in the process wastewater. DEQ did not receive notification from Ariake regarding the unpermitted discharge. Additionally, Ariake’s Permit does not allow for discharges of wastewater.
10. On March 30, 2018, DEQ issued NOV No. W2018-03-V-0002 to Ariake for the unpermitted discharge and failure to report the unpermitted discharge.
11. On April 11, 2018, DEQ staff met with Ariake representatives to discuss the NOV and actions taken by Ariake since the NOV issuance. Ariake submitted documentation detailing the repairs at the Facility, including: the replacement of the leaking vacuum pump line, replacement of the cracked, PVC piping below the scrubber pad, closure of the trench drain to eliminate any future discharge of contaminated water from trucks from entering into the stormwater conveyance system, and a complete reconfiguration of the piping system in the trucking area to direct any drip water or wash down water to the sanitary sewer. Additionally, Ariake hired a company with a vacuum truck and cleaned the stormwater manhole and conveyance system at the Facility.
12. On July 10, 2018, Ariake submitted a DMR and letter of explanation to DEQ, noting that no benchmark sampling was performed for the January 1, 2018-July 1, 2018 monitoring period.
13. On August 20, 2018, DEQ issued NOV No. W2018-08-V-0005 to Ariake for failure to complete the Permit required Benchmark Monitoring for the January 1, 2018-July 1, 2018 monitoring period. Ariake’s response referred back to the letter of explanation submitted with the DMR, stating that Ariake retrained responsible employees, focusing on the schedule and sampling protocols from the Permit.
14. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
15. The Department has issued coverage under no permits or certificates to Ariake other than under VPDES Permit No. VAR051712.
16. Based on the results of the March 7, 2018 inspection, the April 11, 2018 meeting, and the documentation submitted on April 11, 2018 and July 10, 2018, the Board concludes that Ariake has violated the Permit, Va. Code 62.1-44.5, and 9 VAC 25-151-70, as described in paragraph C(4) through C(15), above.

17. Ariake has submitted documentation that verifies that the violations as described in paragraphs C(2) through C(8), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Ariake and Ariake agrees to:

Pay a civil charge of \$21,235 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Ariake shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Ariake shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Ariake for good cause shown by Ariake, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order, in NOV No. W2018-03-V-0002, dated April 11, 2018 and in NOV No. W2018-08-V-0005, dated August 20, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Ariake admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Ariake consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Ariake declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Ariake to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Ariake shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Ariake shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Ariake shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.


9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Ariake. Nevertheless, Ariake agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. the Director or his designee terminates the Order after Ariake has completed all of the requirements of the Order;
 - b. Ariake petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Ariake.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Ariake from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Ariake and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Ariake certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Ariake to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Ariake.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Ariake voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 4th day of April, 2019.



Amy T. Owens, Regional Director
Department of Environmental Quality

Ariake U.S.A., Inc. voluntarily agrees to the issuance of this Order.

Date: 2-13-2019 By: [Signature], Director
(Person) (Title)
Ariake U.S.A., Inc.

Commonwealth of Virginia
City/County of Harrisonburg

The foregoing document was signed and acknowledged before me this 13th day of
February, 2019, by Yuji Hiratska who is
Director of Ariake U.S.A., Inc., on behalf of the corporation.

[Signature]
Notary Public

7741998
Registration No.

My commission expires: 7/31/2021

Notary seal:

7/31/21